

ORDINANCE NO. _____

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING 1-310 SECTION 9.10 AND ADDING A NEW CHAPTER 330 TO TITLE I OF THE MILPITAS MUNICIPAL CODE AND ESTABLISHING THE MILPITAS LOBBYING ORDINANCE

HISTORY: *This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2004, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, 200__, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:*

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1

Section I-310-9.10 of Title I of the Milpitas Municipal Code, "Regulations Governing Lobbyists and Contacts with Elected Officials," is hereby repealed in its entirety.

Section 2.

A new Chapter 330 of Title I to be titled "City of Milpitas Lobbying Ordinance," is hereby added to the Milpitas Municipal Code, to read as follows:

Chapter 330

THE CITY OF MILPITAS LOBBYING ORDINANCE

Section 1. Findings and Purpose

I-330-1.10 Title

This ordinance shall be known as the City of Milpitas Lobbying Ordinance.

I-330-1.20 Purpose

This chapter is intended to foster public trust by accomplishing the following specific goals:

1. To maintain the citizens' constitutional right to petition government for redress of grievances and not to limit the public's access to their elected officials.
2. To guarantee to residents that the City of Milpitas is vigilant in serving only the public's interest in matters where lobbyists may be actively working to influence the City's decision and decision-makers.
3. To promote and maintain the highest standards of ethical conduct in decision-making, by requiring the decision-makers' independence of judgment is not compromised by relationships to lobbyists or lobbyists' actions on behalf of their clients.
4. In the spirit of open and transparent government, to allow the public to know and better understand the prior relationship and current contacts between city officials, lobbyists, political consultants, fundraisers, and lobbyists' clients.
5. To establish a policy that sets clear standards of conduct which citizens may use to hold City officials accountable to the City's Code of Ethics and the provisions of this Ordinance.

Section 2. Definitions and Interpretation

I-330-2.10 Words and Phrases

Words and phrases used in this Ordinance shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

I-330-2.20 Definitions

For the purposes of this ordinance, the following definitions shall be applicable:

- A. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.
- B. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars, and, (1) The City is a party, or (2) the Redevelopment Agency is a party, or (3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or Redevelopment Agency board or any board or commission, officer or employee of the City or the Agency.
- C. "Designated employees" mean City and Redevelopment Agency employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a City or Redevelopment Agency conflict of interest code to file financial interest disclosure statements.
- D. "Local governmental lobbyist" means any individual who: 1) receives or is entitled to receive five hundred dollars (\$500) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or 2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any governmental, legislative or administrative action of the city or the redevelopment agency. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.
- E. "Governmental action" means any administrative or legislative action of the City and the Redevelopment Agency other than an action which is ministerial in nature.
- F. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.
- G. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 330-2.20(E). It includes persons currently doing business with the City or the Redevelopment Agency, planning to do business with the City or Agency, or having done business with the City or Agency within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of

any license or permit which does not require the exercise of discretion by City or Agency officers or employees.

H. "Political Consultant" means a political campaign professional who is engaged primarily in the provision of strategic advice and services, including but not limited to polling, survey research, media creation, media production, media relations, direct mail and fund raising to candidates for public office, campaigns, and political committees.

I. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Section 3. Registration of Lobbyists

I-330-3.10 Registration with the City Clerk

A. No person shall act as a local governmental lobbyist before registering as a local governmental lobbyist with the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing, his or her name; business and residence addresses; telephone and fax numbers; email addresses; client(s) name; address; telephone number and email; each city agency or public official they will attempt to influence on behalf of any client; a statement that said lobbyist has read this Ordinance and understands it; items of municipal legislation for which the firm was retained; prior consulting relationships with any public officials as detailed below under quarterly reports, Section I-330-4.10(G).

C. The lobbyist shall reregister annually during the month of January and at that time submit the required information.

D. Persons subject to the registration requirements of this Chapter shall pay an annual fee, established by resolution of the City Council. Individuals within the same business entity who qualify as lobbyists under the provisions of I-330-2.20 are each subject to this fee.

The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees may be specified by resolution of the City Council, if payment occurs after the due date.

A fine as set forth by resolution of the City Council, up to a maximum of 100% of the unpaid fees, will be assessed until the registration fees and the fines are paid in full.

A fine for delinquent quarterly reports, as set forth by resolution of the City Council, will be assessed until the quarterly reports are filed with the City Clerk.

I-330-3.20 Cessation of Employment.

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

I-330-3,30 Exceptions

The provisions of this Act shall not apply:

- A. To a public official acting in his or her official capacity.
- B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.
- C. To a person specifically invited by the City Council or Redevelopment Agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City or Agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.
- D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.
- E. To any attorney, architect or civil engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing or other official proceeding open to the public; (2) Preparing or submitting writings that will be available for public inspection no later than the public meeting, public hearing or other official proceeding open to the public for which the writings are submitted; and (3) Contacting City or Redevelopment Agency employees or agents working under the direction of the City Manager or Executive Director directly relating to 1. and 2. above.
- F. To designated representatives of a recognized employee organization whose activities are limited to communicating with City officials or their representatives regarding 1) wages, hours and other terms and conditions of employment pursuant to the procedures in the Meyers Milius Brown Act or 2) the administration, implementation or interpretation of an existing employment agreement. This exception does not apply to employee representatives who meet the definition of a lobbyist and attempt to influence a decision or an agreement outside the formal bargaining process.
- G. To persons whose only activity is to 1) submit a bid on a competitively bid contract, 2) respond to a request for proposal or qualifications, or 3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract with any elected official, designated employee, or member of any City board or commission.

I-330-3.40 Noncompliance - Order to Show Cause

A. Upon the request of the Council, the mayor, or any board or commission or member thereof, or any designated employee of the City or Redevelopment Agency, the City Clerk shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the City Clerk that he or she has complied with the registration requirement or is exempt from registration.

C. If the City Clerk determines that such person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council, Redevelopment Agency or other board or commission at a noticed public meeting, on his or her own behalf. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

I-330-3.50 Availability of Information.

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

I-330-3.60 Filing Under Penalty of Perjury

All information required by this Act shall be filed with the City Clerk on forms prescribed by the City Clerk, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

I-330-3.70 Records

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this chapter.

Section 4. Disclosure of Lobbying Activities

I-330-4.10 Quarterly Disclosure

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk. The reports shall be due no later than 10 business days after the end of the calendar quarter. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each individual with whom the lobbyist communicated, estimated number of written, personal or phone contacts and the total time spent in person or on the phone doing such lobbying.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. The date, amount and name of the recipient for any campaign contribution of \$100 or more that is made (1) by the lobbyist or (2) by a client or other person at the behest of the lobbyist; to an elected City officeholder, candidate for elected City office, or to any committee or fund controlled by such officeholder or candidate. A campaign contribution is not made at the behest of a lobbyist if the contribution is made in response to a mass mailing sent to members of the public or in response to an advertisement published in a newspaper or in any other mass media.

E. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, the lobbyist shall disclose (1) the name of the person providing the services, (2) a description of the services, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If any elected city officeholder or candidate for elected city office employs or hires a lobbyist to provide compensated services to the officeholder or candidate, the lobbyist shall disclose (1) the name of the person who employed or hired the lobbyist, (2) a description of the services, and the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

G. If any lobbyist has at any time in the past 10 years served as a political consultant (including in a volunteer capacity), secured donations to a political campaign or candidate, or served as the recipient of any campaign moneys for a client from third parties, the lobbyist shall disclose the name of the elected official(s), the race and its outcome, the dates and specific responsibilities the lobbyist handled for the official(s), campaign(s) or committee(s) the lobbyist worked for as a political consultant, the dates and amounts of money raised through fundraising the lobbyist received on behalf of the candidate(s), campaign(s) or committee(s) working as a political consultant, the amount of money paid to the lobbyist while serving as a political consultant according to the amounts listed in categories E. and F. of this section, and the number of hours of volunteer service the lobbyist donated to the elected official, or campaign or political committee or any other individual or organization at the behest of the original candidate, campaign or political committee.

Section 5. Prohibitions

I-330-5.10 No Unregistered Employment or Activity

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the City Clerk.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith registers as required by this Act.

I-330-5.20 Personal Obligation of City Officials Prohibited

Local governmental lobbyists, clients, contractors and persons doing business with the City or Redevelopment Agency shall abstain from doing any act with the express purpose and intent to place any City or Agency officer or designated employee under personal obligation to such lobbyist, client, contractor or person.

I-330-5.30 Deception Prohibited

No local governmental lobbyist, client, contractor or person doing business with the City or the Redevelopment Agency shall deceive or attempt to deceive a City or Agency officer or designated employee as to any material fact pertinent to any pending or proposed governmental action.

I-330-5.40 Improper Influence Prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

I-330-5.50 False Appearances Prohibited.

No local governmental lobbyist, client, contractor, or person doing business with the City or the Redevelopment Agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a City or Agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

I-330-5.60 Prohibited Representations.

No local governmental lobbyist, client, contractor, or person doing business with the City or the Redevelopment Agency shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City or Agency officer or designated employee.

I-330-5.70 Restriction on Payments and Expenses Benefiting Local Public Officials, Candidates for Local Office, Designated Employees and Immediate Families

A. No lobbyist or a lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$100 during any calendar year.

B. The payments and expenses specified in subsection A include gifts, honoraria, and any other form of compensation but do not include

(1) campaign contributions;

(2) payments or expenses that, within 30 days after receipt, are returned unused or are reimbursed;

- (3) food, beverages or occasional lodging provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present;
- (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. §18944.1(a) through (e), inclusive;
- (6) informational material; and
- (7) salaries, consulting fees or other payments for services rendered or bargained for. Any other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall not apply to this section.

Section 6. Enforcement

I-330-6.10 Procedures and Action

- A. Any person may file a complaint with the City Clerk *alleging violations of this ordinance* by any person. All complaints must be filed on a form specifically provided by the City Clerk *for the purpose of making complaints pursuant to the regulations of this chapter*. The City Clerk shall submit all complaints received to the City Manager.
- B. If after investigation, the City Manager determines there are sufficient facts to warrant a determination of whether a violation of this ordinance has occurred, he or she shall submit his or her findings to the City Council. If the City Council finds a violation of this Act, the Council may
 - (1) Find mitigating circumstances and take no further action;
 - (2) issue a public statement or reprimand; or
 - (3) impose a civil penalty in accordance with this ordinance.

I-330-6.20 Civil Penalties

- A. Civil penalties shall be imposed by resolution of the City Council.
- B. Except as otherwise specified in this Act, the City Council may impose penalties of up to one thousand dollars (\$1,000) for each complaint sustained.
- C. If any civil penalty imposed by the City Council is not timely paid, the Council shall refer the debt to the appropriate city agency or department for collection.

I-330-6.30 Criminal Violation

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within two years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.